

OUT-OF-STATE REAL ESTATE AGENTS ACTING IN IDAHO

Out-of-state real estate brokers and sales associates who are NOT licensed as a broker or salesperson in Idaho should be aware of the following:

1. They may not enter Idaho to list, show, represent, or inspect Idaho property.
2. They may not advertise Idaho property in Idaho.
3. They may not have a sign placed on Idaho property.
4. They may not make initial contact by phone or mail to any potential clients in Idaho.
5. They probably could not sue for a commission if the owner of the property decided not to pay the broker.
6. They could be punished by a fine of up to \$5,000 and/or one (1) year in jail if acting as a broker or salesperson in Idaho without a license, and a limited liability company or a corporation could be fined up to \$10,000.

This does not prevent an out-of-state broker or salesperson from cooperating with an Idaho broker on the sale of Idaho property. An out-of-state broker or salesperson may accompany an Idaho licensee who is doing any of the above, but may not participate in any activities requiring an Idaho license. In addition, a broker licensed in Idaho may share his/her commission with a broker licensed in another state as compensation for work done by the other broker in the other state.

The pertinent sections of the *Idaho Real Estate License Law and Rules* are the following:

1. 54-2002. Licensure Required.
2. 54-2004. Definitions.(1), (2), (5), (7), (14), (21), (22), (23), (29), (30), (32), (33), (34) and (36).
3. 54-2054. Compensation, Commission and Fees-Prohibited Conduct. (1), (2), (3), (4), and (8).
4. 54-2058. Authority to Investigate and Discipline. (1)
5. 54-2064. Proof of Complaint-Prosecution by County Prosecuting Attorney.
6. 54-2065. Penalty for Acting as a Broker or Salesperson Without License.

54-2002. Licensure Required. No person shall engage in the business or act in the capacity of real estate broker or real estate salesperson in this state without an active Idaho real estate license therefore. Unless exempted from this chapter, any single act described within the definitions of "real estate broker" or "real estate salesperson" shall be sufficient to constitute "engaging in the business" within the meaning of this chapter. Any person who engages in the business or acts in the capacity of real estate broker or salesperson in this state, with or without an Idaho real estate license, has thereby submitted to the jurisdiction of the state of Idaho and to the administrative jurisdiction of the Idaho Real Estate Commission, and shall be subject to all penalties and remedies available under Idaho law for any violation of this chapter.

54-2004. Definitions.

(1) "Active license" means the status of a real estate license that has not been inactivated, expired, terminated, suspended or revoked.

(2) "Associate broker" means an individual who has qualified personally as a real estate broker in Idaho under this chapter, but is licensed under, associated with and represents a designated broker in the performance of any act described in subsection (29) of this section.

(5) "Brokerage company" means a real estate business, whether a sole proprietorship, a legal entity, or any other licensed person engaged in acts requiring a real estate license in Idaho, and which is conducting or holding itself out as conducting the business of real estate through a designated broker.

(7) "Business opportunity" means and includes an established business, good will of an established business, or any interest therein, or any one (1) or combination thereof, where a sale or transfer of an interest in land including, but not limited to, an assignment of a lease, is involved in the transaction.

(14) "Designated broker" means an individual who is licensed as a real estate broker in Idaho and who is designated by the brokerage company to be responsible for the supervision of the brokerage company and the activities of any associated licensees in accordance with this chapter.

(21) "Legal business entity" means and includes any type of corporation, partnership, limited liability company or limited liability partnership, a governmental entity, trust or other entity capable of conducting business.

(22) "Licensee" means any person who is licensed in accordance with this chapter to engage in the business or act in the capacity of real estate broker, associate broker or real estate salesperson.

(23) "Limited broker" means a broker individually qualified to do business in Idaho, but who may not have associate brokers or salespersons licensed with that broker.

(29) "Real estate broker" means and includes:

(a) Any person other than a real estate salesperson, who, directly or indirectly, while acting for another, for compensation or a promise or an expectation thereof, engages in any of the following: sells, lists, buys, or negotiates, or offers to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate or any interest therein or business opportunity or interest therein for others.

(b) Any actively licensed broker while, directly or indirectly, acting on the broker's own behalf;

(c) Any person who represents to the public that the person is engaged in any of the

above activities;

(d) Any person who directly or indirectly engages in, directs, or takes any part in the procuring of prospects, or in the negotiating or closing of any transaction which does or is calculated to result in any of the acts above set forth.

(e) A dealer in options as defined in this section.

(30) "Real estate salesperson" or "salesperson" means any person who has qualified and is licensed as a real estate salesperson in Idaho under this chapter, and is licensed under, associated with, and represents a designated broker in the performance of any act described in subsection (29) of this section.

(32) "Reciprocal license" means an Idaho real estate license that is issued pursuant to the terms of a specific, written reciprocal agreement between Idaho and another state or jurisdiction, and that is contingent upon the licensee's maintaining a license in the other state or jurisdiction.

(33) "Regulated real estate transaction" means those real estate transactions for which a real estate license is required under chapter 20, title 54, Idaho Code.

(34) "Responsible broker" means the designated broker in the regulated real estate transaction who is responsible for the accounting and transaction files for the transaction, in the manner described in section 54-2048, Idaho Code.

(36) "Sales associate" means a salesperson or an associate broker licensed under and associated with a designated broker.

54-2054. Compensation, Commissions and Fees – Prohibited Conduct.

(1) Court action for fee collection. No person engaged in the business or acting in the capacity of real estate broker or salesperson in Idaho shall bring or maintain any action in the courts for the collection of a fee, commission or other compensation for the performance of any acts requiring a real estate license as provided in section 54-2002, Idaho Code, without alleging and proving that such person was an actively licensed broker or salesperson in Idaho at the time the alleged cause of action arose.

(2) Fee-splitting with unlicensed persons prohibited. Unless otherwise allowed by statute or rule, a real estate broker, associate broker or salesperson licensed in the state of Idaho shall not pay any part or share of a commission, fee or compensation received in the licensee's capacity as such in a regulated real estate transaction to any person who is not actively licensed as a real estate broker in Idaho or in another state or jurisdiction. The Idaho broker making the payment to another licensed person is responsible for verifying the active licensed status of the receiving broker. This section shall not prohibit payment of a part or share of a commission, fee or compensation by the broker to a legal business entity, all of whose shareholders, members or other persons having a similar ownership interest are active real estate licensees. An Idaho licensee may pay any part or share of a commission, fee or compensation received, directly to the buyer or seller in the real estate transaction. However, no commission, fee or compensation may be split with any party to the transaction in a manner which would directly or indirectly create a double contract, as defined in this chapter or which would otherwise mislead any broker, lender, title company or government agency involved in the transaction regarding the source of funds used to complete the real estate transaction or regarding the financial resources or obligations of the buyer.

(3) Finder's fees prohibited. Any offer of monetary value, by an Idaho licensee, to any

person who is not licensed in Idaho or any state or jurisdiction, made for the purpose of inducing such unlicensed person to secure prospects to buy, sell, option, or otherwise dispose of an interest in real property shall be considered to be splitting fees with an unlicensed person, and is prohibited.

(4) Interference with real estate brokerage agreement prohibited. It shall be unlawful for any person, licensed or unlicensed, to interfere with the contractual relationship between a broker and a client. Communicating a company's relocation policy or benefits to a transferring employee or consumer shall not be considered a violation of this subsection so long as the communication does not involve advice or encouragement on how to terminate or amend an existing contractual relationship between a broker and client.

(8) After-the-fact referral fees prohibited. It shall be unlawful for any person to solicit or request a referral fee or similar payment from a licensed Idaho real estate broker or sales associate, for the referral of a buyer or seller in connection with a regulated real estate transaction, unless the person seeking the referral fee has reasonable cause. "Reasonable cause" shall not exist unless:

(a) The person seeking the referral fee has a written contractual relationship with the Idaho real estate broker for a referral fee or similar payment; and

(b) The contractual relationship providing for the referral fee exists at the time the buyer or seller purportedly referred by such person signs a written agreement with the Idaho broker for the listing of the real estate or for representation by the broker, or the buyer signs an offer to purchase the real estate involved in the transaction. It shall be unlawful for any person including, but not limited to, a relocation company or company with a relocation policy or benefits, to directly or indirectly threaten to or actually reduce or withhold promised or expected employee or customer relocation benefits from a buyer or seller in a regulated real estate transaction based upon a broker's participation in payment of a referral fee or other fee.

54-2058. Authority to Investigate and Discipline.

(1) General authority to investigate. The Commission may investigate the action of any person engaged in the business or acting in the capacity of real estate broker or salesperson within the state of Idaho, or any person believed to have acted as a real estate broker or salesperson without a license in violation of section 54-2002, Idaho Code. Upon receipt of a written complaint from anyone who claims to have been injured or defrauded as a result of such action, or upon information received by the Executive Director, the Executive Director shall perform an investigation of the facts alleged against such real estate broker or salesperson or such unlicensed person. Prior to the initiation of any proceedings for the revocation or suspension of a license, or for such other disciplinary actions as set forth in section 54-2059, Idaho Code, the Executive Director shall transmit to the Commission a report, in writing, signed by the Executive Director, setting forth the facts alleged against such real estate broker or salesperson or unlicensed person. Upon receiving such report, the Commission shall make an examination of all the facts and circumstances connected with such report. If the facts set forth in the report are deemed insufficient by the Commission, no further action shall be taken, unless the Executive Director resubmits the report with additional facts supporting the filing of an administrative complaint. Should the Commission deem that the facts set forth in the report are sufficient to proceed with a formal action, the Commission shall authorize the filing of an administrative complaint against such person.

A person is acting “within the state of Idaho” if that person is dealing with any interest in real property or a business opportunity involving an interest in real property, which is situated in this state, or is conducting or attempting to conduct or solicit real estate business with residents of the state of Idaho.

54-2064. Proof of Complaint – Prosecution by County Prosecuting Attorney.

The Commission may prefer a complaint for violation of any section of this chapter before any court of competent jurisdiction. It shall be the duty of the prosecuting attorney of each county in the state to prosecute all violations of the provisions of this chapter in their respective counties in which the violations occur.

54-2065. Penalty for Acting as a Broker or Salesperson Without License.

Any person acting as a real estate broker or real estate salesperson within the meaning of this chapter without a license as herein provided shall be guilty of a misdemeanor and, upon conviction thereof, if a natural person, be punished by a fine of not to exceed five thousand dollars (\$5,000), or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment in the discretion of the court or if a limited liability company or corporation, by a fine of not to exceed ten thousand dollars (\$10,000). Additionally, the court may assess a civil penalty against a natural person in an amount not to exceed five thousand dollars (\$5,000), and against a limited liability company or corporation, in an amount not to exceed ten thousand dollars (\$10,000). All civil penalties shall be credited to the special real estate fund.